

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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SEP 3 - 1996

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

CC Docket No. 94-102
RM-8143

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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**PETITION FOR RECONSIDERATION
AND/OR CLARIFICATION**

Southwestern Bell Mobile Systems, Inc. (SBMS) files this Petition requesting the Federal Communications Commission (Commission) to reconsider and/or clarify certain portions of its July 26, 1996 Report and Order and Further Notice of Proposed Rulemaking filed in this docket.¹

SBMS is concerned that the Report and Order, as written, may discourage local and state municipalities and safety agencies from accepting wireless 911 calls or implementing E911 features such as Automatic Number Identification (ANI). SBMS' concern is premised on what appears to be some confusion in the Report and Order regarding the current capabilities of existing wireless systems and how the technology, particularly validation technology, performs. The Commission should clarify certain portions of the Report and Order consistent with existing technology and standards so as to avoid any confusion in implementation. The failure to recognize and rely on the existing technical capabilities can greatly increase the cost of implementation while providing no real added benefit--the resulting effect being an

¹In the Matter of Revision of the Commission's Rules to Ensure compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, Released July 26, 1996. (Report and Order).

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unwillingness of the public to fund the cost recovery mechanisms. Thus, reconsideration and/or clarification of the facts relied on is required in the public interest.²

The Commission should also reconsider its decision to force wireless carriers to complete 911 calls from individuals who have no contractual relationship with the carrier without some type of limitation of liability. The Commission's decision creates a significant economic risk for wireless carriers. The Commission should 1) impose a limitation of liability, 2) mandate that anyone placing a 911 call on a carrier's network who does not have a contractual relationship with the carrier is subject to the carriers standard terms and conditions, and 3) should specifically promulgate that a carrier's inability to complete a call or provide the information required by this docket shall not be evidence of negligence on the part of the carrier. Again, failure to provide such limitation of liability protection may have a detrimental effect on the availability of wireless 911 services and thus reconsideration is required in the public interest.

I. THE REPORT AND ORDER SHOULD ENCOURAGE NOT DISCOURAGE DEPLOYMENT OF E911 CAPABILITY. THE COMMISSION NEEDS TO CLARIFY CERTAIN PROVISIONS CONSISTENT WITH EXISTING TECHNOLOGIES AND STANDARDS.

A. The Commission Needs to Clarify Its Rule that 911 Calls Are to be Completed Without a Validation Requirement.

The Report and Order requires wireless carriers "to transmit to any appropriate PSAPs all 911 calls made from wireless handsets which transmit a code identification, including calls initiated by roamers".³ The Commission recognizes that such handset may not be currently

²47 CFR 1.429(b)(3).

³Report and Order, para. 10.

subscribed to any wireless carriers system.

Passing such calls through to the PSAP is not a problem **in areas where the PSAP is willing to accept wireless 911 calls**. As noted in the Comments not all PSAPs are willing to accept wireless 911 calls.⁴ The Commission needs to clarify a wireless carrier's obligation if a PSAP states that it does not want wireless 911 calls or where multiple PSAPs are requesting calls from the same cell or cell face. The wireless carriers should not be placed in the middle of such controversies between public agencies. The obligation to pass 911 calls should only arise where there is a PSAP willing to take the calls or agreement amongst competing PSAPs regarding who will take the call.

Where 911 service is available, many carriers including SBMS, permit such calls without a **validation requirement**. It is important for the Commission to recognize however the difference between a "validation requirement" and "being subject to a validation process".⁵ The **Report and Order** makes several references that 911 calls should not be "subject to any user validation process" or should be processed "without requiring any user validation or similar procedure".⁶ The distinction is critical because SBMS and other carriers which allow all 911 calls to go through today, provided there is an available PSAP, rely on current switch features whereby the switch is programmed to "ignore" or not act on the validation response. The scenario

⁴SBC comments, pp. 4-7.

⁵**Compare, Report and Order**, paras. 10, 29, 36, **with** para. 37 ("our concerns regarding the risk of such a burden are mitigated by the fact that several major wireless carriers have been processing 911 calls without a validation requirement").

⁶**See, Report and Order**, paras. 10, 29.

described in Paragraph 34 of the Report and Order whereby a carrier “switch will screen incoming calls from mobile units, determine whether a code identification is present and then (if such a code is present) immediately route the call to a PSAP without further call screening” is simply inconsistent with deployed switch technology. The existing process is to have a validation check but ignore the result if the call is a 911 call. Such a process accomplishes the Commission’s objective that a person should not be “subject to any validation or similar carrier initiated procedures **that could result in a delay in the delivery of a 911 call to a PSAP**”.⁷ Further, there is nothing in the record to indicate that the scenario described in Paragraph 34 will result in any quicker handling of the call than the current method.

The existing process does not result in a delay of the call to the PSAP--the call is delivered automatically as if the mobile handset had been validated. SBMS believes that the Commission meant to allow the carriers to continue allowing such calls to be handled using existing deployed features of the switches (i.e. setting the switch to ignore the validation response on 911 calls). The Commission should clarify that the intent is simply that 911 calls should not be subject to a validation requirement--not that new technology be developed and deployed.

B. The Report and Order Draws an Unneeded Distinction between Code Identified and Non-Code Identified Phones.

As noted, the Report and Order draws a distinction between “code identified” and “non-code identified” mobile handsets.⁸ From a technology standpoint however, there is no

⁷Report and Order, para. 33.

⁸See, Report and Order, para. 10 and footnote 12.

difference between a “code-identified” handset which is not successfully validated and a “non-code” identified handset - - the switch handles both the same way.

Pursuant to FCC standards established when cellular was being developed, validation is accomplished by matching the MIN or “code identification” with the corresponding Electronic Serial Number (ESN) unique to that particular handset. The serving carrier has the ESN/MIN combinations for its own subscribers and has the roaming partners’ NPA/NXX codes programed so that the serving carrier’s switch automatically routes the validation inquiry to the home carrier or third party data base for validation. Where the ESN/MIN combination cannot be validated, whether because the subscriber’s carrier is not a roaming partner or because the subscriber has canceled service and thus the ESN/MIN combination has been removed, a negative validation response occurs. A negative validation response might also occur if the handset has been preprogrammed by the manufacturer with digits to fill space prior to the assignment of the MIN, or if the manufacturer simply left such spaces blank.⁹ As noted above, wireless carriers who process all 911 calls today do so by setting their switch “ignore” or not act on the validation response on 911 calls.

Thus, mandating that all affected wireless carriers must transmit 911 calls from phones with a MIN or “code identification” means that calls from handsets without a MIN will also be processed. Thus, the Commission’s apparent grant to the PSAPs of the right to choose whether they want to receive “non-code identified” calls is a non-issue because such calls will be processed by the wireless switch regardless. Ironically, this result of not allowing different

⁹SBMS’ experience has been that manufacturers use some number (i.e. 222-222-222) to fill the MIN slot. Thus, it is unclear whether there are actual “non-code identification” handsets.

PSAPs to refuse to take such calls is also consistent with the switch's inability to ignore the validation on some 911 calls but not all 911 calls. The wireless switch simply does not have the capability to ignore the validation if the 911 call is going to one PSAP but enforce the validation if the 911 call is going to a the a neighboring PSAP.

The Commission's concern regarding the delivery of calls from "non-code identification" handsets is based the fact that such handsets would have significant drawbacks including the fact that ANI and call back features may not be used.¹⁰ The Report and Order fails to recognize however that the ability of the PSAP to use ANI for call back features are also a significant drawback for "code identified" handsets which are not currently subscribed to any wireless carrier and handsets which are subscribed to carriers who do not have a roaming agreement in place with the serving market. In simplest terms, passing the telephone number (or MIN) of calls from mobile handsets which are not subscribed to any carrier or which are subscribed to carriers which do not have a roaming agreement with the serving system will not allow the PSAP to call back if disconnected. When a PSAP uses the public switched network to call back using the ANI (i.e. the MIN) the call is routed like any other telephone call pursuant to the North American Numbering Plan - - the call will be routed pursuant to the NPA-NXX-XXXX combination. The call will be directed to the wireless carrier assigned such NPA-NXX. The wireless carrier will then transmit the MIN (NPA-NXX-XXXX) or, if the handset is in a roaming partner's area, forward the call to the roaming partner pursuant to the call delivery provisions of the roaming agreement. The handset then transmits back the ESN/MIN

¹⁰Report and Order, para. 38.

combination which is then validated and the call is delivered. Thus, if the call was from a customer whose carrier does not have a roaming agreement, the return call will be routed via the MIN (NPA-NXX-XXXX) back to the home carrier who has no way of knowing where the customer is and thus has no way of delivering the call. Likewise, if the individual is not a subscriber of any carrier, the return call will either not be able to be delivered because of a MIN (i.e. 222-222-2222) which is inconsistent with the NANP or because the MIN being used no longer corresponds to a valid ESN/MIN combination and thus validation and delivery back cannot take place. There is simply no way today to route a call back to a mobile handset which is not subscribed to any wireless carrier via the public switched network, by direct trunking or by the wireless standards and equipment currently deployed. In fact the result may likely be that the telephone number (MIN) programmed into the handset of the individual who is no longer a subscriber is likely programmed into and being used by a current subscriber. Thus, a call from the PSAP using the ANI (MIN) that was passed would be transmitted to the current subscriber with the reassigned phone number leaving the PSAP extremely confused.

The Commission mandate that 911 calls must be delivered from all wireless mobile handsets that contain a “code identification”, or “MIN” when combined with the Phase 1 E911 requirement that ANI be provided, so the PSAP can always call back if disconnected, envisions a scenario which cannot be met without substantial development work by switch manufacturers and deployment of the resulting technology, along with network reconfiguration and modifications by the wireless carriers. Any solution involving failing to rely on the ESN/MIN combinations on return calls would also likely create even more opportunities for fraud.

The Commission acknowledges that the PSAPs are in the best position to determine whether acceptance of calls from handsets without a code identification helps or hinders their efforts to preserve and promote health and safety in their communities.¹¹ The same analysis is true for non-service initiated handsets which contain a MIN because the inability to call back is the same.

The Commission should clarify its Report and Order consistent with the capability of the technology. PSAPs and carriers should have the ability in implementing Phase 1 and Phase 2 to rely on existing technology and features to provide what the PSAPs believe creates the best balance between cost and preserving the public health and safety in their communities.

II. THE COMMISSION SHOULD RECONSIDER ITS REFUSAL TO PROVIDE LIMITATION OF LIABILITY PROTECTION.

Radio communications by their very nature are subject to a wide variety of propagation effecting factors. The Commission itself recognizes "the unique characteristics of wireless mobile services might preclude access in certain circumstances". Despite the nature of radio communications, the Commission's acknowledgment that access might be precluded and the uncertainty of automatic location identification technology, the proposed rules are drafted as requiring that wireless carriers "must" process all 911 calls and "must" relay various information, yet the rules do not provide any limitation of liability protection to the carriers.

Instead, the Report and Order states that "if the wireless E911 provider wishes to

¹¹Report and Order, para. 39.

protect themselves from liability for negligence, they may attempt to bind customers to contractual language".¹² The Report and Order notes that local exchange carrier immunity is generally "a product of provisions contained in local exchange tariffs" and thus concludes "that covered carriers can afford themselves similar protection by including similar provisions in contracts with their customers".¹³ The vast majority of the wireless carriers already have limitation of liability provisions, including explanations regarding the effect atmospheric conditions, foliage and other propagation factors may have on the availability of service, in the agreements with their customers. Likewise, Roaming Agreements address limitation of liability concerns.

The problem is that the Report and Order requires wireless carriers to deliver calls from any individual who has a handset programed with an "identification code" or MIN. The Report and Order specifically acknowledges that the handset may in the hands of an individual who "is not a subscriber of to any wireless service" and that the requirement could result in "the transmission of some 911 calls placed by non-subscribers."¹⁴ It is the individuals who have no privity of contract with the serving carrier, or perhaps any carrier, that the Commission is now requiring the wireless carriers to serve that causes the serving carrier the greatest risk of liability. The response in the Report and Order that wireless carriers can afford themselves protection by including language in their contracts provides wireless carriers with little comfort when the Report and Order is also requiring the carriers to carry calls from individuals who have no contractual relationship with the

¹²Report and Order, para. 99.

¹³Id. It should also be noted that local exchange tariffs apply to anyone using the service.

¹⁴See, Report and Order, para. 36.

carrier.

The Report and Order further states that carriers can somehow protect themselves, if the liability is caused by the rulings of the Commission, by arguing that the acts complained of were caused by the acts of public authority.¹⁵ SBMS believes that the Commission's promulgation of the rules without a limitation of liability is more likely to be used as a sword in litigation against the carriers than as any type of shield. Claimants are likely to argue that the use of the term "must" creates an absolute duty on the wireless carrier.

The failure to provide limitation of liability protection will have a detrimental impact on the PSAPs willingness to accept 911 calls or deploy wireless E911 capability. The Report and Order provides that one method carriers may use to protect themselves is to require public safety organizations to hold them harmless for liability.¹⁶ The failure of the Commission to provide any limitation of liability provision makes such a method an economic necessity for carriers who are not otherwise protected. It seems unlikely that PSAPs will agree to hold the wireless carrier harmless.¹⁷ The more likely result is that they will simply refuse to handle wireless 911 calls or deploy E911 technology. Thus, an unattended result of this docket may be that PSAPs are discouraged rather than encouraged to deploy wireless E911 capabilities. Such a result is not in the public interest and thus

¹⁵Report and Order, para. 99.

¹⁶Report and Order, para. 99.

¹⁷There may be an issue for some PSAPs whether they would have the legal authority to agree to hold the carrier harmless. In addition, most, if not all state laws, provide statutory limitation of liability protection to the PSAP and it is unlikely that such PSAPs would want to create a risk of liability where none currently exists. Finally, and as a practical matter, the PSAPs would seemingly have few assets and thus it is questionable how much real protection a carrier would receive by requiring PSAPs to hold them harmless for liability.

correcting such result is consistent with the Commission's statutory charge of promoting safety of life and property through the use of radio communication.¹⁸

The Commission should reconsider its position of not addressing the wireless carriers liability concerns and:

1. impose a limitation of liability,
2. mandate that anyone placing a call on a carrier's network who does not have a contractual relationship with the carrier is subject to the carriers standard terms and conditions, and
3. specifically promulgate that a carrier's inability to complete a call or provide the information required by this docket shall not be evidence of negligence on the part of the carrier.

¹⁸See, 47 U.S.C. 151.


Conclusion

For the reasons state herein, the Commission should reconsider and/or clarify its Report and Order consistent with existing standards and technology, and should provide limitation of liability provisions.

Date: September 3, 1996

Southwestern Bell Mobile Systems, Inc.

By:

A handwritten signature in black ink, appearing to read "Bruce E. Beard", is written over a horizontal line.

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